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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 65

ROBERT D. WATKINS, APPELLANT,

vs.

J. F. CONWAY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

FILED JANUARY 26, 1966
PROBABLE JURISDICTION NOTED MARCH 21, 1966

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 954

ROBERT D. WATKINS, APPELLANT,

vs.

J. F. CONWAY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

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[fol. 23]

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

Case No. A-82670

ROBERT D. WATKINS, Plaintiff,

v.

J. F. CONWAY, Defendant.

ORIGINAL PETITION—Filed October 5, 1960

TO THE SUPERIOR COURT OF SAID COUNTY:

The petition of Robert D. Watkins showeth that J. F. Conway, of said county, is indebted to your petitioner the sum of $25,000, besides interest, on a judgment obtained by your petitioner against the said J. F. Conway, in the Circuit Court of the 15th Judicial District, County of Palm Beach, State of Florida, held on the 5th day of October, 1955, as will fully appear by reference to an exemplification of the proceeding in said case; that the said judgment is unsatisfied, and that the said J. F. Conway neglects to pay the same; wherefore, your petitioner prays process may issue requiring the said J. F. Conway to file his answer in accordance with law. Wherefore petitioner prays for judgment in the amount of $25,000 plus interest and costs.

Potter Langbein & Burdick (205 Datura St., West Palm Beach, Fla.), Smith, Kilpatrick, Cody, Rogers & McClatchey, By Miles J. Alexander, Attorneys for Petitioner, 1045 Hurt Building, Atlanta 3, Georgia.

[File endorsement omitted]

1

[fol. 49]

IN THE SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

AMENDMENT TO ANSWER AND ORDER FILING SAME—
February 1, 1965

Comes Now the defendant, J. F. Conway, in the above named and stated case, and with leave of Court first had and obtained, amends his answer heretofore filed by adding new paragraphs as follows:

3.

By way of further plea and answer, the defendant, J. F. Conway, in the above named and stated case, says that the right of action of the plaintiff on the cause sued upon as above set forth, if any he ever had, accrued more than five years next before the commencement of the above stated suit and that his right of action thereon, if any he ever had, is therefore barred by the statute of limitations.

4.

Defendant avers that the laws of this state provides that such a suit upon a foreign judgment shall be brought within five years after such judgment shall have been obtained.

5.

Defendant avers that the said suit was not filed until more than five years from the date of such foreign judgment and the same is therefore barred by the statute of limitations as set forth in Code Section 3-701 of the 1933 Code of Georgia as amended.

Martin McFarland, Attorney for Defendant J. F. Conway, 808 William-Oliver Building, Atlanta, Georgia 30303.

[fol. 50] *Duly sworn to by J. F. Conway, jurat omitted in printing.*

[fol. 51] ORDER

The within and foregoing Amendment is hereby allowed and ordered filed, subject to the objections and demurrers of the plaintiff.

This 1 day of February, 1965.

Virlyn B. Moore, Judge, Fulton Superior Court.

[File endorsement omitted]

Certificate of Service (omitted in printing).

[fol. 57]

IN THE SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S PLEAS OF THE STATUTE OF LIMITATIONS—Filed May 28, 1965

Now Comes Robert D. Watkins, plaintiff in the above-styled case and files this its motion to strike the plea of the statute of limitations filed by defendant on or about May 15, 1964, and also to strike the plea of the statute of limitations filed on or about February 1, 1965, and shows the following facts:

1.

On October 5, 1960, Robert D. Watkins, plaintiff, filed his petition in the Superior Court of Fulton County, Georgia, against J. F. Conway, as defendant, said petition being an action on a foreign (Florida) judgment.

2.

Defendant timely filed his answer and demurrers (both general and special) to said petition on December 21, 1960.

3.

Thereupon and before said demurrers were heard, the plaintiff did, on or about December 16, 1963, amend his petition.

4.

The amended petition alleged that said Florida judgment was obtained by plaintiff against defendant on October 5, 1955, [five (5) years and one (1) day before the filing of this suit].

[fol. 58]

5.

To said petition as amended, defendant did file timely demurrers, both general and special.

6.

Subsequently, on or about May 15, 1964, defendant purported to amend his answer by filing with the Clerk of the Superior Court his "Plea of the Statute of Limitations," setting out the five (5) year statute of limitations against foreign judgments, 1933 Code of Georgia §3-701. However, said "Plea" was never allowed and ordered filed by any judge of this Court; nor did the defendant attach to said "Plea" the affidavit required by Georgia Code §81-1310.

7.

Subsequently, on or about February 1, 1965, defendant amended his answer by filing with the Clerk of the Superior Court a plea of the statute of limitations, setting out the five (5) year statute of limitations against foreign judgments, 1933 Code of Georgia §3-701.

8.

By virtue of 1933 Code of Georgia §110-1001, as amended, 1955 Georgia Laws, p. 417, 418 and 1933 Code of Georgia §110-1002, a Georgia judgment remains enforceable for a

period of ten years without the requirement of any action on a plaintiff's part.

Wherefore, plaintiff moves the following:

1.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that the mere filing of an amendment, such as a "Plea of the Statute of Limitations" without an order allowing said amendment is not sufficient to constitute such purported amendment a part of the record of the case.

[fol. 59]

2.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that defendant did not attach thereto the affidavit required by Georgia Code §81-1310.

3.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, as applied to plaintiff, is void and unconstitutional, being in violation of Article IV, Section 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute, wherein a Georgia judgment obtained on the same date as plaintiff's would still be enforceable. Thus, the effect of said statute is to deprive plaintiff of the full faith and credit guaranteed foreign judgments by the United States Constitution.

4.

Plaintiff moves that defendant's plea of the statute of limitations (filed on or about February 1, 1965) be stricken

and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, as applied to plaintiff, is void and unconstitutional, being in violation of Article IV, Section 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute, wherein a Georgia judgment obtained on the same date as plaintiff's would still be enforceable. Thus, the effect of said statute is to deprive plaintiff of the full faith and credit guaranteed foreign judgments by the United States Constitution.

[fol. 60] 5.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, is void and unconstitutional, being in violation of Article IV, Section 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute, wherein a Georgia judgment obtained on the same date as plaintiff's would still be enforceable. Thus, the effect of said statute is to deprive plaintiff of the full faith and credit guaranteed foreign judgments by the United States Constitution.

6.

Plaintiff moves that defendant's plea of the statute of limitations (filed on or about February 1, 1965) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, is void and unconstitutional, being in violation of Article IV, Section 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute, wherein a Georgia judgment obtained on the same date as plaintiff's would still be enforceable. Thus, the effect of said statute is to deprive plaintiff of the full faith and credit guaranteed foreign judgments by the United States Constitution.

7.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, as applied to plaintiff, is void and unconstitutional, being in violation of the equal protection clause of Amendment XIV of the United States Constitution, in that plaintiff's judgment is barred by said statute, whereas a Georgia judg-
[fol. 61] ment obtained on the same date would be enforceable; thus the effect of said statute is to deprive plaintiff of the equal protection of the laws of the State of Georgia, in that he, as a holder of a foreign judgment, is discriminated against in favor of holders of Georgia judgments.

8.

Plaintiff moves that defendant's plea of the statute of limitations (filed on or about February 1, 1965) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, as applied to plaintiff, is void and unconstitutional, being in violation of the equal protection clause of Amendment XIV of the United States Constitution, in that plaintiff's judgment is barred by said statute, whereas a Georgia judgment obtained on the same date would be enforceable; thus the effect of said statute is to deprive plaintiff of the equal protection of the laws of the State of Georgia, in that he, as a holder of a foreign judgment, is discriminated against in favor of holders of Georgia judgments.

9.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant is

void and unconstitutional, being in violation of the equal protection clause of Amendment XIV of the United States Constitution, in that plaintiff's judgment is barred by said statute, whereas a Georgia judgment obtained on the same date would be enforceable; thus the effect of said statute is to deprive plaintiff of the equal protection of the laws of the State of Georgia, in that he, as a holder of a foreign judgment, is discriminated against in favor of holders of Georgia judgments.

[fol. 62] 10.

Plaintiff moves that defendant's plea of the statute of limitations (filed on or about February 1, 1965) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant is void and unconstitutional, being in violation of the equal protection clause of Amendment XIV of the United States Constitution, in that plaintiff's judgment is barred by said statute, whereas a Georgia judgment obtained on the same date would be enforceable; thus the effect of said statute is to deprive plaintiff of the equal protection of the laws of the State of Georgia, in that he, as a holder of a foreign judgment, is discriminated against in favor of holders of Georgia judgments.

Wherefore, plaintiff prays that its motion be inquired into, and that defendant's "Plea of the Statute of Limitations" filed on or about May 15, 1964, be stricken and that defendant's plea of the statute of limitations filed on or about February 1, 1965, be stricken.

Kilpatrick, Cody, Rogers, McClatchey & Regenstein, William G. Vance, Attorneys for Plaintiff, 1045 Hurt Building, Atlanta, Georgia 30303, JAckson 2-7420.

[File endorsement omitted]

[fol. 63] Certificate of Service (omitted in printing).

[fol. 64]

IN THE SUPERIOR COURT OF FULTON COUNTY

Case No. A-82670

ROBERT D. WATKINS, Plaintiff,

vs.

J. F. CONWAY, Defendant.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT —June 1, 1965

The Motion for Summary Judgment filed by defendant on the 19th day of February, 1965, and plaintiff's Motion to Strike defendant's Plea of the Statute of Limitations coming on regularly to be heard, and after hearing from counsel for plaintiff and defendant, and it appearing to the Court that the defendant has withdrawn the plea to the statute of limitations filed on May 18, 1964, leaving filed of record the amended answer and plea to the statute of limitations ordered filed of record on February 1, 1965, and filed of record on February 1, 1965, and it further appearing to the Court that the sole question to be determined is the constitutionality of Georgia Code §3-701 as raised by defendant's Motion for Summary Judgment and plaintiff's Motion to Strike defendant's Plea of the Statute of Limitations, and it appearing to the Court that plaintiff's amended petition shows on its face that the said Florida judgment was obtained by the plaintiff and against the defendant on October 5, 1955 (5 years and 1 day before the filing of this suit, Case A-82670 Fulton Superior Court) and that said period of limitation had run,

Now Therefore, after consideration, it is hereby ordered and adjudged as follows, to-wit:

[fol. 65] (1) The Motion for Summary Judgment filed by defendant on February 19, 1965, is hereby granted on the grounds that the statute of limitations provided by Georgia Code §3-701 has run and that Georgia Code §3-701 is hereby declared constitutional; and

(2) Plaintiff's Motion to Strike filed May 28, 1965, is hereby denied, it being found that Georgia Code §3-701 neither violates Article IV, Section I, (full faith and credit clause) of the United States Constitution nor Amendment XIV of the United States Constitution.

This 1st day of June, 1965.

Virlyn B. Moore, Judge, Atlanta Judicial Circuit.

[File endorsement omitted]

[fol. 68]

IN THE SUPREME COURT OF GEORGIA

September Term, 1965

108

23070

WATKINS

v.

CONWAY

OPINION—September 22, 1965

Duckworth, Chief Justice. 1. Full faith and credit as required by the Constitution, Art. IV, Sec. I (Code § 1-401), is not denied foreign judgments by the provision of Code § 3-701, which is: "All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained." 50 CJS, 448 § 873,

and cases cited; Metcalf v. Watertown, 132 U. S. 671 (14 SC 947, 38 LE 861); Great Western Tel. Co. v. Purdy, 162 U. S. 329 (16 SC 810, 40 LE 986).

[fol. 69] 2. Nor is equal protection required by the 14th Amendment (Code § 1-815) denied such judgments because domestic judgments are made valid for seven years (Code Ann. § 110-1001; Ga. L. 1955, pp. 417, 418), and may be revived during dormancy of three years from 7 to 10 years after rendition. Code §§ 110-1002, 110-1003. This law refers solely to enforceability and is unrelated to suits of any kind.

3. We know of no statutory law of this State dealing with suits on domestic judgments, and none has been cited by counsel for plaintiffs in error. Therefore when the legislature dealt with foreign judgments in Code § 3-701 it was dealing with the named class, "foreign judgments," which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in Code Ann. § 110-1001, supra.

4. Therefore, the plea of the limitations of Code § 3-701 to this suit on a Florida judgment which was instituted more than five years after the date of that judgment was valid, and the court did not err in sustaining the same and dismissing the suit based upon the Florida judgment.

Judgment affirmed. All the Justices concur except Mobley, J., not participating for providential cause.

[fol. 70]

IN THE SUPREME COURT OF GEORGIA

JUDGMENT—September 22, 1965

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

ROBERT D. WATKINS,

v.

J. F. CONWAY.

This case came before this court upon a writ of error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur except Mobley, J., not participating for providential cause.

[fol. 76]

IN THE SUPREME COURT OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—
October 7, 1965

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

ROBERT D. WATKINS,

v.

J. F. CONWAY.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Mobley, J., not participating for providential cause.

[fol. 77]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed November 29, 1965

I. Notice is hereby given that Robert D. Watkins, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Georgia Supreme Court, entered in this action on September 22, 1965, dismissing plaintiff's suit on a foreign judgment.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The original petition, including process issuing thereon, in the case of Robert D. Watkins v. J. F. Conway, No. A-82670, Fulton Superior Court, filed October 5, 1960. (R. pp. 1-2).

2. The demurrers of the defendant, J. F. Conway, filed in the Fulton Superior Court on December 21, 1960, together with Certificate of Service thereon. (R. pp. 3-4).

[fol. 78] 3. The amendment to plaintiff's petition, filed on or about, December 16, 1963, together with the Order of Court thereon dated December 16, 1963, and Certificate of Service thereon. (R. pp. 5-18).

4. The demurrers of the defendant to the petition as amended filed on December 19, 1963, together with Certificate of Service thereon. (R. pp. 19-21).

5. The order and judgment of Judge Stonewall Dyer of the Fulton Superior Court, dated January 31,

1964, sustaining defendant's general demurrer. (R. p. 22).

6. The decision of the Court of Appeals (110 Ga. App. 96) reversing the ruling of Judge Dyer and overruling the general demurrer. (R. pp. 23-26).

7. The amended answer and plea of the statute of limitations of defendant filed on February 1, 1965, together with Order of Court thereon dated February 1, 1965, together with Certificate of Service thereon. (R. pp. 27-29).

8. Defendant's Motion for Summary Judgment, filed on February 19, 1965, together with Certificate of Service thereon. (R. pp. 30-34).

9. Plaintiff's Motion to Strike Defendant's Plea of the Statute of Limitations filed May 28, 1965, together with Certificate of Service thereon. (R. pp. 35-41).

10. The Order of Judge Virlyn B. Moore of the Fulton Superior Court, dated June 1, 1965, granting defendant's Motion for Summary Judgment, and denying plaintiff's Motion to Strike Defendant's Plea of the Statute of Limitations. (R. pp. 42-43).

11. Plaintiff's Bill of Exceptions to the June 1, 1965, order of Judge Virlyn B. Moore, filed June 18, 1965, [fol. 79] together with the Certificate of Judge Moore, and the Acknowledgment of Service.

12. The opinion of the Supreme Court of Georgia, dated September 22, 1965, affirming the decision of the trial court, and dismissing this action.

13. The judgment of the Supreme Court of Georgia, dated September 22, 1965, affirming the decision of the trial court and dismissing this action.

14. Plaintiff's Motion for Rehearing filed September 30, 1965.

15. The Order of the Supreme Court, dated October 7, 1965, denying plaintiff's Motion for Rehearing.

III. The following questions are presented by this appeal:

1. Plaintiff having filed suit in Georgia on a Florida judgment five (5) years and one (1) day after its rendition, is the full faith and credit guaranteed foreign judgments by Article IV, Section 1, of the United States Constitution denied Plaintiff by a Georgia statute of limitations against foreign judgments (Ga. Code §3-701), where the period of enforceability of a foreign judgment is limited to five (5) years by said statute of limitations, while domestic (Georgia) judgments are enforceable under Georgia law for a period of ten (10) years, before lapsing? Otherwise stated, is Ga. Code §3-701 as applied to plaintiff, void and unconstitutional, being in violation of Article IV, Section [fol. 80] 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute whereas a Georgia judgment obtained on the same date as plaintiff's would still be enforceable?

2. Plaintiff having filed suit in Georgia on a Florida judgment five (5) years and one (1) day after its rendition, is the equal protection of the laws guaranteed by Amendment XIV, Section 1, of the United States Constitution denied plaintiff by a Georgia statute of limitations against foreign judgments (Ga. Code §3-701), where the period of enforceability of a foreign judgment is limited to five (5) years by said statute of limitations, while domestic (Georgia) judgments are enforceable under Georgia law for a period of ten (10) years, before lapsing? Otherwise stated, is Ga. Code §3-701 unconstitutional because said statute has the effect of depriving plaintiff of the equal protection of the laws of Georgia, in that he, as a holder of a foreign judgment, is discriminated against because he has

a shorter period of time in which to enforce his judgment than a similarly situated holder of a Georgia judgment?

Kilpatrick, Cody, Rogers, McClatchey & Regenstein,

By: William G. Vance, G. Kimbrough Taylor, Jr.,

Emmet J. Bondurant, 1045 Hurt Building, Atlanta, Georgia 30303, JAckson 2-7420.

[fol. 81] Proof of Service (omitted in printing).

[fol. 81a]

[File endorsement omitted]

[fol. 82] Clerk's Certificate to foregoing Transcript (omitted in printing).

[fol. 83]

SUPREME COURT OF THE UNITED STATES

No. 954—October Term, 1965

ROBERT D. WATKINS, Appellant,

v.

J. F. CONWAY.

ORDER NOTING PROBABLE JURISDICTION—March 21, 1966

Appeal from the Supreme Court of the State of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

March 21, 1966

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